IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-1115

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT, and INTERNATIONAL SPEEDWAY CORPORATION,

Petitioners,

v.

COUNTY OF VOLUSIA, a political subdivision of the State of Florida, ROBERT D. SUMMERS, as Tax Collector and Administrator of the Division of Revenue of the County of Volusia, and HARRY L. COE, JR., as Executive Director, Department of Revenue, State of Florida,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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TABLE OF CONTENTS

AUTHORITIES CITED

Cases:

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SUPREME COURT OF THE UNITED STATES

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OPINIONS BELOW

The opinion of the court of appeals, not yet reported, is reproduced at Appendix A (pp. 1a-4a, *infra*). The opinion of the district court, reproduced at Appendix B (pp. 5a-9a, *infra*), is not reported.

JURISDICTION

The opinion and judgment of the court of appeals was filed on September 1, 1978. A timely petition for rehearing was denied on October 17, 1978. (Appendix C, p. 10a, *infra*). Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Whether the Florida Supreme Court's summary foreclosure without argument or substantive briefing of petitioner's claim that the Impairment of Contract Clause of the United States Constitution, was violated by legislative repeal of a permanent tax exemption on which petitioners relied in constructing a Two-Million-Dollar Speedway, amounted to denial of a "plain, speedy and efficient remedy" within the meaning of the Tax Injunction Act.

STATUTES INVOLVED

1. The Tax Injunction Act, 28 U.S.C. §1341, provides:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

2. Section 13 of Chapter 31343 of the Laws of Florida (1955), provides:

> Exemption from Taxation.—As the economic welfare of the inhabitants of the District is dependent to a substantial degree on tourist business brought to the District because of the recreational facilities and opportunities afforded therein, and as the acquisition or construction of racing and recreational facilities hereunder will promote the economic, commercial and residential development of the District, and as the exercise of the powers conferred by this Act to effect such purposes constitutes the performance of essential public functions, and as the racing and recreational facilities will constitute public property used for public purposes, no taxes or assessments shall be levied upon any

> such racing and recreational facilities or upon the income therefrom and any bonds issued under the provisions of this Act, their transfer and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation within the state.

3. Chapter 73-647 of the Laws of Florida (1973) provides:

> WHEREAS, facilities of the Daytona Beach racing and recreational facilities district have been exempt from taxation and assessment, and
>
> WHEREAS, the ever-increasing cost of government in Volusia County requires that additional funds be derived from taxation of property in the county, and
>
> WHEREAS, the removal of such exemption will result in certain facilities in Volusia County providing their pro rata share of the cost of government, and
>
> WHEREAS, the legislation intends that any facilities of said district be taxed in the same manner as any other property in Volusia County,
> NOW THEREFORE
>
> Be It Enacted by the Legislature of the State of Florida:
>
> Section 1. Section 13 of chapter 31343, Laws of Florida, 1955, is hereby repealed.
>
> Section 2. This act shall take effect January 1, 1974.

STATEMENT

International Speedway Corporation owns and operates the Daytona International Speedway, where auto racing events, including the "Daytona 500" stock car race and the "24 Hours at Daytona" international road

race, are held. This case arises out of a sudden and radical change in Florida tax law, which nullified the permanent tax-exempt status given by a 1955 statute to the leasehold interest on the property where the speedway was built as an incentive for the construction of such facilities. Petitioners claimed, in state and federal courts, that the promise of permanent tax-exempt status for the leasehold interest was constitutionally protected. The federal courts have refused to hear petitioners' claim, relying upon the Tax Injunction Act, 28 U.S.C. §1341, even though petitioners were never afforded the opportunity in a Florida state court to present evidence on their constitutional claim and received no meaningful opportunity to argue the merits of the constitutional claim, either in oral or written form. The underlying facts may be briefly summarized.

In 1955 the Florida State legislature created the Daytona Beach Racing and Recreational Facilities District (hereinafter "the District"), for the purpose of constructing and operating racing and recreational facilities within the district. The District was given broad authority to issue revenue bonds and enter into contracts and leases in order to construct the needed facilities. In addition, the 1955 statute (pp. 2-3, *supra*) declared that no taxes or assessments would be levied upon the racing and recreational facilities or upon the income thereon.

After an unsuccessful attempt by the District to raise money for the construction of the proposed speedway through revenue bonds, the District turned for assistance to the International Speedway Corporation, a private corporation. The property was subleased to International Speedway Corporation in November, 1957, to construct a speedway within five years. By February 1959, the

Corporation had constructed the Daytona International Speedway at a cost exceeding $2 million. Since that time, the Corporation has expended approximately $1.6 million on capital improvements. Pursuant to the 1955 law, the leasehold was exempt from local property taxes following its construction.

In May 1973, the Florida legislature suddenly repealed the permanent tax exemption granted by the 1955 law. The Tax Assessor of Volusia County thereafter fixed the value of the Corporation leasehold interest at more than $6.8 million, and imposed an *ad valorem* tax of approximately $140,000 annually.

Petitioners promptly challenged the assessment on various state and federal grounds. Petitioners brought an action in federal court on the theory that the repeal violated the Impairment of Contract Clause of the United States Constitution (Article I, Section 10, clause 1). *Daytona Beach Racing and Recreational Facilities District v. County of Volusia,* No. 74-267-Orl-Civ-Y (M.D.-Fla). That action was dismissed by the district court on the ground that the Tax Injunction Act, 28 U.S.C. §1341, barred a federal suit since there was an adequate remedy in the Florida state courts. The Court of Appeals for the Fifth Circuit summarily affirmed. *Daytona Beach Racing and Recreational Facilities District v. County of Volusia,* 512 F.2d 1404 (5th Cir. 1975).

Petitioners subsequently amended the complaint they had filed in state court (which had previously asserted only local law questions) to include, "under protest," the federal impairment-of-contract claim. Paragraph 38 of the amended State complaint reads:

> The Plaintiff Speedway would not have undertaken the construction and financing it did in 1958

> if it had not been insured, by the provision of the law and by the indemnification agreement of Plaintiff District, that its interest in the real property would not be subject to taxes. The sudden imposition of such taxes on Speedway's interest substantially diminishes the value of its contract right and impairs the effectuation by both District and Speedway of the public purpose sought by the 1955 Act.

Petitioners thereafter moved for summary judgment on grounds of state law only. No evidence or argument was presented on the federal claim, which had been made "under protest." Respondents moved for summary judgment on all grounds, state and federal. Petitioners responded with a summary affidavit, in order to preserve the federal constitutional claim for an evidentiary hearing, if necessary. On October 17, 1975, the Florida Circuit Judge granted petitioner's motion on state-law grounds, expressly declaring that it was not necessary to rule on the petitioners' impairment-of-contract claim.

On appeal, the Florida Supreme Court reversed the trial court's ruling on the issues of state law, and then proceeded to reject summarily petitioners' federal constitutional claim—even though the lower court had taken no evidence on the claim, it had not been argued before the lower court, and there had been no argument upon it in petitioner's brief before the Florida Supreme Court. Citing *no* federal ruling and only one Florida case (*Straughn v. Camp*, 293 So.2d 689 (Fla. 1974)), the majority of the Florida Supreme Court upheld the repeal of the tax exemption, stating that "a subsequent legislature has the unquestioned authority to repeal prior tax exemption statutes." *Daytona Beach Racing and Recreational Facilities District v. County of Volusia*, 341 So.2d 498, 502 (Fla. 1976). Shortly thereafter, this Court issued its decision in *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977), and petitioners thereupon appealed to this Court, requesting that the case be remanded for reconsideration in light of this Court's most recent interpretation of the Impairment of Contract Clause. Respondents argued, *inter alia*, that the decision of the Florida Supreme Court rested on an independent state ground and was not, therefore, appropriate for this Court's review. This Court dismissed the appeal for want of a substantial federal question. *Daytona Beach Racing and Recreational Facilities District v. County of Volusia*, 434 U.S. 804 (1977).

Petitioners filed a second federal complaint in the United States District Court for the Middle District of Florida after the Florida Supreme Court's precipitous and unexpected ruling on their federal constitutional claim. In paragraph 27 of their complaint, with regard to the Tax Injunction Act, petitioners alleged that:

> The actions taken by the Supreme Court of Florida as described in paragraphs 5(f) and 5(g) of this complaint demonstrate that the Plaintiffs are not afforded an "adequate, speedy or efficient remedy" in the state courts for the consideration of the important federal constitutional claim.

After this Court dismissed petitioners' appeal from the Florida Supreme Court, the federal district court ruled that the dismissal was a decision on the merits rejecting petitioners' constitutional claim (p. 8a, *infra*). On appeal, petitioners argued that this Court's summary dismissal did not resolve the federal constitutional claim. The Court of Appeals did not decide the effect of this Court's earlier dismissal. Instead it ruled that the Tax Injunction Act barred petitioners' suit. Mistakenly characterizing the record made in the state court as a "failure to present any

evidence and argument," the court explained its ruling as follows (p. 4a, *infra*):

> All that is required is that the state must provide a "plain, speedy and efficient remedy" in the courts of the state. This Florida has done, and the plaintiffs' failure to present any evidence and argument to the Florida state court will not make the Florida remedy improper. The Plaintiffs cannot fail to take advantage of the state remedy and then litigate in federal courts.

REASONS FOR GRANTING THE WRIT

(1) The decision of the court of appeals is directly contrary to this Court's decision in *Georgia Railroad & Banking Co. v. Redwine*, 342 U.S. 299 (1952). In the *Georgia Railroad* case, as in this one, the initial appearance of the case on the federal court's docket *preceded* any invocation of an assertedly "plain, speedy and efficient" state remedy. *See* 85 F.Supp. 749 (N.D. Ga. 1949). The district court dismissed the complaint at that juncture, and, on appeal, this Court continued the case on its docket to permit the state remedies to be invoked. 339 U.S. 901 (1950).

That point in the history of the *Georgia Railroad* case was parallel to the point at which the district court dismissed petitioners' first complaint in the fall of 1974. Both cases involved state tax matters. Indeed, both cases concerned challenges to repeals of the tax exemptions that had been included in special laws dealing with the facility constructed by the taxpayers. And in both situations, the federal constitutional claim was that the repeal amounted to an impairment of contract in violation of Article I, Section 10 of the United States Constitution.[1]

[1] The *Georgia Railroad* case concerned a tax exemption that this Court had unanimously construed to be binding on the state [footnote continued]

In the *Georgia Railroad* case, as in this one, the allegedly "plain, speedy and efficient" State remedy turned out, on actual implementation, to be wholly worthless. See 208 Ga. 261, 66 S.E.2d 234 (1951). As a result, this Court ruled in *Georgia Railroad* that a proceeding to enjoin the State Revenue Commissioner from assessing and collecting the State tax was then permissible, notwithstanding 28 U.S.C. §1341. 342 U.S. 299 (1952). On remand, judgment was entered for the plaintiff. 122 F.Supp. 93 (N.D.Ga. 1952).

The same procedure should have been followed here. Instead, the federal court dismissed petitioners' second claim on an erroneous understanding of the meaning of this Court's summary dismissal, and the Court of Appeals then closed the door to federal court on a misimpression of what had happened in state court. This resulted in the unjustified and total foreclosure of a valid federal constitutional claim.

(2) This case involves important questions concerning the power of a state legislature to revoke a permanent tax exemption on which a private corporation relied in constructing a two-million-dollar facility and investing an additional one-and-one-half million dollars in capital improvements. The assurance of the exemption was reinforced by the assurance given in the contract between

in *Wright v. Georgia Railroad & Banking Co.*, 216 U.S. 420 (1910). The Court there said (216 U.S. at 432; emphasis added):

> We are therefore of opinion that this property is not subject to any other method of taxation than that of the special system stipulated for by the contract, *and that the act of the Georgia legislature*, insofar as it provides for an ad valorem tax upon any part of this invested capital of the Georgia Railroad & Banking Company, *does impair the obligation of the contract.*

the private corporation and the District, which was a state-created and state-managed entity. Contrary to the Florida Supreme Court's holding that a legislature has "unquestioned" authority to repeal prior tax exemptions, this Court recently recognized that the power of state legislatures regarding statutory covenants is not entirely "unquestioned." See *United States Trust Co. of New York, Trustee v. New Jersey*, 431 U.S. 1 (1977), and particularly footnote 21, in which this Court recognized that permanent tax exemptions granted by statute are state "contracts" subject to constitutional protection. The cavalier attitude taken by the Florida courts, which dismissed petitioners' substantial constitutional claim, without giving the matter plenary consideration, justifies limited federal intervention into this state tax matter. Indeed, the record of this case establishes that Florida provided a remedy that was so "speedy" that it was no remedy at all. Rather than hearing and considering the constitutional claim on the merits, it disposed of it in a form that demonstrated no consideration whatever. Such action by an appellate court, taken without notice and hearing, is a denial of due process of law and is surely inadequate to meet the standard of the Tax Injunction Act.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT, a body politic and corporate under the laws of the State of Florida, and International Speedway Corporation, a Florida Corporation, Plaintiffs-Appellants,

v.

COUNTY OF VOLUSIA, a political subdivision of the State of Florida, et al., Defendants-Appellees.

No. 78-1634

Summary Calendar.*

United States Court of Appeals,
Fifth Circuit.

Sept. 1, 1978.

* * *

Appeal from the United States District Court for the Middle District of Florida.

Before THORNBERRY, GEE and FAY, Circuit Judges.

PER CURIAM:

In 1955, the Forida legislature exempted from taxation racing and recreational facilities to be acquired or constructed by the plaintiff, Daytona Beach Racing and Recreational Facilities District. Subsequently, plaintiff, International Speedway Corporation, subleased land from the District and constructed a racing facility. In 1973, the Florida legislature repealed the tax exemption.

The plaintiffs brought suit in United States district court in 1974 alleging that the Florida Legislature's

*Rule 18, 5 Cir.; *See Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York et al.*, 5 Cir., 1970, 431 F.2d 490, Part 1.

action violated the Impairment of Contract Clause.[1] The district court dismissed the action holding that the Tax Injunction Act of 1937, 28 U.S.C. §1341, prohibited relief since the State of Florida provided a "plain, speedy and efficient remedy" in state court.[2] We affirmed without opinion. *Daytona Beach Racing and Recreational Facilities District v. County of Volusia.* 512 F.2d 1404 (5 Cir. 1975).

The plaintiffs then amended a pending state suit to include their constitutional claim. The plaintiffs, however, did not offer any evidence to the Florida trial court relating to their constitutional contention. The Florida trial court found for the plaintiffs on state grounds and the defendants appealed. The Florida Supreme Court reversed the trial court and the United States Supreme Court dismissed the appeal for lack of a substantial federal question. *Daytona Beach Racing and Recreational Facilities District v. County of Volusia,* 341 So.2d 498 (Fla. 1977).

The plaintiffs again brought suit in federal court contending that the Florida Supreme Court improperly rejected their constitutional argument since no evidence was presented on the issue in the Florida trial court. The district court dismissed the action holding that the Supreme Court's dismissal in the prior action was dispositive on the constitutional claim. We need

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[1] U.S.Const. Art. 1, §10.

[2] The Order dismissing the action under the Tax Injunction Act of 1937 is reproduced below:

> This cause came on before the Court for a hearing on the motion of all the defendants, Cournty of Volusia, Robert Bolin, Robert D. Summers, and J. Ed Straughn, to dismiss the complaint. The undisputed facts are that the plaintiffs seek to challenge in this court on federal constitutional claims the action of the Legislature of Florida in terminating a previously enacted tax exemption granted to the plaintiffs.[1]
>
> In view of *Great Lakes Dredge & Dock Company v. C. C. Huffman,* 319 U.S. 293 (63 S.Ct. 1070), L.Ed. 1407 (1943) and *Bland v. McHann,* 463 F.2d 21 (5th Cir., 1972), the position of the defendants appears to have merit in that this Court finds that the plaintiffs have a "plain, speedy, and efficient remedy" in the state courts.[2] 28 United States Code §1341.
>
> [1] Section 13 of Florida Statutes, Chapter 31343, enacted in 1955 provided that no taxes or assessments were to be levied upon any of the racing and recreational facilities that were constructed pursuant to the Act. In 1973, Fla. Statutes Chapter 73-647 was enacted which repealed Section 13 of Chapter 31343, Laws of Florida, 1955, thus eliminating plaintiffs' tax exempt status.
>
> The plaintiffs have also filed in the State Courts of Florida a challenge to the same statute eliminating their tax exemption based upon alleged state grounds. The defendants contend that Section 1341, Title 28 United States Code, precludes this Court from considering this case and that plaintiffs must look to the State Courts for relief, including the federal constitutional grounds raised by them.
>
> [2] FSA §194.171, the predecessor to which the Fifth Circuit has found satisfied the requirements of

[footnote continued]

> 28 U.S.C. §1341. *Carson v. City of Ft. Lauderdale,* 293 F.2d 337 (5th Cir., 1961).
>
> The plaintiffs presented the ingenuous argument that, based on cases not involving state taxes, this court should retain jurisdiction of this case so as to permit the plaintiffs to litigate in the state courts only their state claims and then, if unsuccessful, to pursue for the first time their federal claims in this court.
>
> While such a procedure has been authorized for non-state tax issues, it is not the procedure specifically approved in state tax matters. It is, therefore
>
> ORDERED that the motion to dismiss be and is hereby granted and this case is dismissed.
>
> DONE AND ORDERED in Chambers at Orlando, Florida, this 7th day of November, 1974.

not consider this argument since it is plain that the Tax Injunction Act of 1937 still bars the federal courts from assuming jurisdiction in this suit. The Act states:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State. June 25, 1948, c. 646, 62 Stat. 932.

28 U.S.C. §1341.

All that is required is that the state must provide a "plain, speedy and efficient remedy" in the courts of the state. This Florida has done, and the plaintiffs' failure to present any evidence and argument to the Florida state court will not make the Florida remedy improper. The plaintiffs cannot fail to take advantage of the state remedy and then litigate in federal court.

The plaintiffs' first suit was barred because the State of Florida provided a proper remedy for the litigation of their claim, and the plaintiffs' second suit is barred for the same reason. *See Kiker v. Hefner,* 409 F.2d 1067 (5 Cir. 1969).

The district court was correct in dismissing the action because it is without jurisdiction to hear the matter.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

No. 77-99-Orl-Civ-Y

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT, a body politic and corporate under the laws of the State of Florida, et al,

Plaintiffs,

vs.

COUNTY OF VOLUSIA, a political subdivision of the State of Florida, et al,

Defendants.

ORDER

The attached transcript of the ruling of this Court made from the bench this date, setting forth its reasons for granting the Motion to Dismiss the Complaint, is hereby Ordered to be this Court's Memorandum Opinion.

DONE and ORDERED in Chambers at Orlando, Florida, this 8th day of February, 1978.

/s/ George C. Young
Chief Judge

Copies mailed to counsel of record.

THE COURT: The plaintiff in this case, Daytona Beach Racing and Recreational Facilities District, seeks to prevent the County of Volusia and the State of Florida from taxing the racing facilities of the plaintiff which were constructed under a lease agreement with the International Speedway Corporation. The District has been granted by Legislative enactment an exemption from property taxes and thereafter the District, failing to sell the revenue bonds for the construction of the Speedway facility, entered into a contract with the International Speedway Corporation to construct and to operate the facilities with the provision that that corporation would enjoy the same exemption from taxes as had been granted by the Legislature to the District.

After the facilities were constructed, the Legislature as a result of a change in the Constitution of Florida and by further legislation repealed that exemption.

The plaintiffs here, several years ago, sought to enjoin the collection of the taxes in this court. This court under the anit-injunction statute declined to grant the relief sought, and dismissed the case, which dismissal was on appeal affirmed.

Simultaneously with the case in this court, the plaintiffs brought suit in the State Court seeking on two grounds, state and federal, the same relief which was denied in the federal court. According to the record in this case, the State Circuit Judge granted the plaintiff summary judgment on the state ground, finding that the repeal by the Legislature was ineffective to accomplish its objective in that it failed to repeal that portion of the initial exemption statute wherein

the Legislature had found that the facilities were for a public purpose.

On appeal to the Supreme Court of Florida that court reversed the Circuit Court of Florida and in a decision by that court, it was held that One, the Legislature could not bind another and that there was no contract between the Legislature and the plaintiffs in that case. Further, the Supreme Court of Florida found that the Circuit Judge of the State Court was in error in holding that the Legislature had to repeal the finding that the facilities were for a public purpose in order to effectively repeal the tax exemption.

The plaintiff appealed the adverse decision from the Supreme Court of Florida to the Supreme Court of the United States and in the plaintiffs' brief on jurisdiction the questions that were submitted to the Supreme Court of the United States as the issues upon which jurisdiction with the Supreme Court rested were: One, that the State had violated a promised permanent tax exemption; Two, that the Supreme Court of Florida had entered a final judgment or decree on the federal constitutional claim by the last two paragraphs of the Supreme Court of Florida decision and; Three, that the constitutional issue presented to the court was sufficient for plenary briefing and argument. The Supreme Court of the United States dismissed the appeal on the ground that a substantial federal question was not involved.

Now, for this trial court to be able to entertain this proceeding there must be jurisdiction. This is a court of limited jurisdiction and unless there is a substantial federal question involved there would be no jurisdiction in this Court.

In the very recent case of *Mandel v. Bradley* which was decided last year, June 16, 1977, 53 L.Ed.2d 199, on Page 205, the Supreme Court of the United States has said and I quote:

> "Summary affirmances and dismissals for want of a substantial federal question without doubt reject the specific challenges presented in the statement of jurisdiction and do leave undisturbed the judgment appealed from. They do prevent lower courts from coming to opposite conclusions on the precise issues presented and necessarily decided by those actions. . . ."

The precise issue being sought to be presented in this Court by the plaintiffs was the precise issue presented in the statement of jurisdiction to the Supreme Court of the United States which was dismissed for lack of a substantial federal question. That decision by the Supreme Court of the United States therefore is absolutely binding on this Court and precludes this Court from further consideration of this issue.

Accordingly, for lack of jurisdiction as previously determined by the Supreme Court of the United States, as noted herein, the motion for dismissal will be, by separate order, granted, said dismissal to be with prejudice.

. . . Thereupon, the proceedings were concluded.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Case No. 77-99-Orl-Civ-Y

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT, a body politic and corporate under the laws of the State of Florida, et al.,

Plaintiffs,

vs.

COUNTY OF VOLUSIA, a political subdivision of the State of Florida, et al.,

Defendants.

ORDER

For the reasons stated from the bench which have been transcribed and a copy filed simultaneously herewith as the Court's Memorandum Opinion, it is

ORDERED that the motion to dismiss be and is hereby granted and this case is dismissed with prejudice.

SO ORDERED in Chambers at Orlando, Florida, this 8th day of February, 1978.,

/s/ George C. Young
Chief Judge

Copies to: Counsel of record

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 78-1634

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT, a body politic and corporate under the laws, of the State of Florida, and INTERNATIONAL SPEEDWAY CORP., a Florida Corp.,

Plaintiffs-Appellants,

versus

COUNTY OF VOLUSIA, a political subdivision of the State of Florida, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ON PETITION FOR REHEARING
(October 17, 1978)

Before THORNBERRY, GEE and FAY, Circuit Judges

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT:

/s/ Homer Thornberry
United States Circuit Judge

IN THE

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TABLE OF CONTENTS

AUTHORITIES CITED

Cases:

Cases, continued: Page

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION

QUESTION PRESENTED

Whether the decision of the Supreme Court of Florida in Volusia County v. Daytona Beach Racing and Recreational Facilities District, 341 So.2d 498 (Fla. 1976), which confirmed the taxability of the leasehold of International Speedway Corporation, denied petitioners a "plain, speedy and efficient remedy" within the meaning of the Tax Injunction Act, 28 U.S.C. §1341.

STATEMENT

In 1971, the Florida Legislature enacted Ch. 71-133, Laws of Florida 1971, known as the Tax Reform Act. The Act subjected private leaseholds in government-owned lands to ad valorem taxation. Section 196.001(2), Florida Statutes. In addition, Section 14 of Ch. 71-133 repealed special-act tax exemptions throughout the State.[1]

Petitioners, International Speedway

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[1]The Florida Legislature later specifically repealed the special-act exemption relied on by petitioners, by enacting Ch. 73-647, Laws of Florida 1973.

Corporation, et al., filed suit in the Circuit Court for Volusia County, Florida, to contest the 1974 ad valorem tax levied on the corporation's leasehold. Their federal suit contesting the same tax was dismissed and the dismissal was affirmed on appeal. Daytona Beach Recreational Facilities District v. County of Volusia, 512 F.2d 1404 (5 Cir. 1975). Petitioners then amended their state court complaint by adding their impairment of contract claim "under protest."

Thereafter, all parties moved for summary judgment in the Florida Circuit Court. Petitioners moved for summary judgment on state grounds only, i.e., "only as to the issue of public purpose." Respondents moved for summary judgment on all issues.

The Florida Circuit Court heard both motions for summary judgment. Contrary to petitioners' assertion at page 6 of their

petition that "no evidence or argument was presented on the federal claim," evidence and arguments were submitted on the impairment of contract claim. Petitioners filed an "Affidavit in Opposition to Defendants' Motion for Summary Judgment," signed by the President of International Speedway Corporation, in support of their impairment of contract claim.[2] (Respondents' Appendix A, p. la) The respondent Florida Department of Revenue submitted a written memorandum of law which opposed the impairment of contract claim on the authority of Straughn v. Camp, 293 So.2d 689 (Fla. 1974); Camp v. Straughn, 491 U.S.

[2]The record also contained extensive pleadings, exhbits and other affidavits. Petitioners described the leasing arrangements in detail in their amended complaint and attached copies of the leases as exhibits. The amended complaint reveals that the private corporation leased the subject property from the District on November 8, 1957 -- two years after the Legislature enacted the special-act exemption.

891 (1974);[3] and other cases.

After the hearing, the Florida Circuit Court entered Summary Final Judgment in favor of petitioners, on state grounds. The Court recited in the judgment:

> "THIS CAUSE was considered by the Court upon motions by all parties for Summary Judgment, everyone agreeing that there are no facts in dispute."

On respondents' appeal to the Supreme Court of Florida, respondents assigned as error the Circuit Court's failure to grant their motion for summary judgment. That issue was argued by all parties in the Supreme Court of Florida. Respondents again relied on Straughn v. Camp, 293 So.2d 689 (Fla. 1974), app. dism., 491 U.S. 891 (1974) and other authorities.

[3]In the Camp case, private lessees of government-owned lands on Santa Rosa Island claimed that the 1971 repeal of the 1949 special act exempting Santa Rosa Island properties from taxation impaired the obligation of contract. The Supreme Court of Florida rejected the argument on the basis of both Florida and federal authorities. This Court dismissed the lessees' appeal for want of a substantial federal question.

Petitioners relied on the affidavit of the President of International Speedway Corporation filed in support of their impairment of contract claim. (Respondents' Appendix B, p. 6a)

Before the Supreme Court of Florida denied petitioners' exemption claim, petitioners did not object to the presentation or hearing of arguments on the impairment of contract issue in either the Circuit Court or the Supreme Court of Florida.

ARGUMENT

At page 6 of their petition, petitioners accuse the Supreme Court of Florida of "summarily" rejecting their impairment of contract claim without evidence or argument. The accusation is unjustified and factually inaccurate.[4] The impairment

[4]In their arguments to the Supreme Court of Florida, petitioners themselves asserted that the Circuit Court "had sufficient evidence before it in the nature of the Affidavit of William H. G. France [footnote continued]

of contract issue was properly before both the Florida Circuit Court and the Supreme Court of Florida. It was raised in the Circuit Court by respondents' motion for summary judgment on all issues. It was raised in the Supreme Court by respondents' assignment of the denial of their motion for summary judgment as error. Petitioners did not move to strike that assignment of error, nor did they object to argument on the impairment of contract issue until the Supreme Court of Florida had ruled against them. Petitioners acknowledged that their impairment of contract claim was before the court by filing the affidavit of William H. G. France in the Circuit Court

and therefore there were no genuine issues of fact as to the granting of the motion in favor of Plaintiffs." (Emphasis supplied.) (Respondents' Appendix B, p. 6a) At no time before the Supreme Court of Florida ruled against them did petitioners argue that the evidentiary record was insufficient or that factual issues precluded the entry of summary judgment in favor of respondents.

and by relying on that affidavit in their arguments to the Supreme Court of Florida. Respondents argued the impairment of contract issue at length in both courts and petitioners did not object. The fact that petitioners chose to emphasize Florida law in their arguments, instead of stressing their impairment of contract claim, does not give them reason to complain here.[5]

Petitioners rely on Georgia Railroad & Banking Co. v. Redwine, 342 U.S. 299 (1952), in which this Court held that Georgia did not afford a "plain, speedy and efficient" remedy within the meaning of the Tax Injunction Act, 28 U.S.C. §1341. However, that case and this one are fundamentally different. In the Georgia Railroad case, this Court considered the controversy after the Supreme Court of Georgia had ruled that Georgia statutes did not afford the railroad any right of judicial review of the State Revenue Commissioner's decision that its property was taxable. Georgia Railroad & Banking Co. v. Redwine, 208 Ga. 261, 66 SE2d 234 (1951).[6]

Georgia Railroad & Banking Co. v. Redwine, 342 U.S. 299 (1952) and United States Trust Co. v. New Jersey, 431 U.S. 1 (1977) both dealt with express legislative covenants, the contractual nature of which was not disputed.[7] In this case,

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[5]Petitioners' tactical decision to emphasize state law arguments is understandable. Under substantially identical circumstances, the impairment of contract argument had been rejected a short time earlier by both the Supreme Court of Florida and by this Court. Straughn v. Camp, 293 So.2d 689 (Fla. 1974), Camp v. Straughn, 491 U.S. 891 (1974).

[6]In contrast, Chapter 194, Florida Statutes, provides a comprehensive system of administrative and judicial review of Florida ad valorem tax assessments. Chapter 86, Florida Statutes, also confers broad jurisdiction on Florida courts to award declaratory relief.

[7]The State of Georgia did not deny that the railroad's charter constituted a contract which could not be impaired by subsequent legislation. Wright v. Georgia [footnote continued]

petitioners' impairment of contract claim is patently invalid because of the non-existence of any contract.[8] Contracts to grant permanent tax exemptions must be express and cannot be created by implication. Providence Bank v. Billings, 29 U.S. (4 Pet.) 514 (1830); Christ Church v. County of Philadelphia, 65 U.S. (24 How.) 300 (1861). Such contracts must be shown to exist and their scope and duration are never extended beyond their express terms. Tucker v. Ferguson, 89 U.S. (22 Wall.) 527,

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Railroad & Banking Co., 216 U.S. 420, 422 (1910). Similarly, the parties did not deny the contractual character of the 1962 statutory covenant considered in United States Trust Co. v. New Jersey, 431 U.S. 1, 18 (1977).

[8]In 1965, the Supreme Court of Florida affirmed the validity of the 1955 special-act exemption in dispute here (Sec. 13, Ch. 31,343), but expressly held that the exemption privilege conferred by the statute was subject to legislative repeal. The Court said, "Like the Almighty in all things, the Legislature in certain mundane things 'giveth and taketh away.'" Daytona Beach Racing and Recreational Facilities District v. Paul, 179 So.2d 349, 355 (1965).

574 (1875). Action in reliance on non-contractual tax exemption statutes does not breathe contractual life into them. Wisconsin and Michigan Railway Co. v. Powers, 191 U.S. 379, 386 (1903).

This is the second occasion on which petitioners have presented their impairment of contract claim to this Court. Their appeal from the Supreme Court of Florida's decision in Volusia County v. Daytona Beach Racing and Recreational Facilities District, 341 So.2d 498 (Fla. 1977), on impairment of contract grounds, was dismissed for want of a substantial federal question. Daytona Beach Racing and Recreational Facilities District v. Volusia County, 434 U.S. 804 (1977).[9]

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[9]Both the Supreme Court of Florida and this Court have repeatedly rejected the constitutional objections of private lessees of Santa Rosa Island properties, to the repeal of their special-act exemptions and the ad valorem taxation of their leaseholds. Straughn v. Camp, 293 So.2d 689 (Fla. 1974), app. dism. 491 U.S. 891 (1974) [footnote continued]

CONCLUSION

For the above reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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(impairment of contract); Williams v. Jones, 326 So.2d 425 (Fla. 1975), app. dism. 429 U.S. 803 (1976)(denial of equal protection and impairment of contract); Hord v. Askew, 359 So.2d 455 (Fla. 1978), app. dism. 58 L.Ed.2d 314 (1978)(impairment of contract). This Court dismissed all of these appeals for want of a substantial federal question.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three (3) copies of the foregoing Brief for Respondent in Opposition have been furnished, by mail, this 12th day of February, 1979, to each of the following:

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Harold F. X. Purnell

APPENDIX A

Petitioners' Affidavit Filed In
Florida Circuit Court

IN THE CIRCUIT COURT FOR
VOLUSIA COUNTY, FLORIDA

CIVIL ACTION NO. 74-2861-01

DAYTONA BEACH RACING AND
RECREATIONAL FACILITIES
DISTRICT, etc., et al.,

Plaintiffs,

vs.

COUNTY OF VOLUSIA, etc.,
et al.,

Defendants.

AFFIDAVIT IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

STATE OF FLORIDA
COUNTY OF VOLUSIA

Before me, the undersigned authority, personally appeared William H. G. France, who, after being duly sworn, deposes and says:

1. My name is William H. G. France, President of Plaintiff, International

Speedway Corporation, a Florida corporation, and all matters contained herein are true and correct to the best of my knowledge.

2. This Affidavit is made in opposition to Defendants' Motion for Summary Judgment filed herein in the above styled cause.

3. Plaintiff, International Speedway Corporation, undertook substantial financial obligations in reliance upon Sections 12 and 17 of Chapter 31343, Laws of Florida of 1955, which recognized the public function performed by the construction and operation of the subject racing facility and insured to the owners of the facility, as well as to private investors who would have purchased bonds, that their property would at all times be free of state and local ad valorem taxes.

4. Because conventional financing was not available for construction of the

subject racing facility because of the restrictive nature of the lease, funds were obtained by the International Speedway Corporation at high interest rates and certain of the loans required the personal endorsement of principal officers and stockholders of the corporation.

5. Plaintiff, International Speedway Corporation, has always considered Section 13 of the aforementioned 1955 Special Act as constituting a legislative contract under which the legislature of Florida, by special enactment directed to the local conditions in Daytona Beach, warranted to the Plaintiff, Daytona Beach Racing and Recreational Facilities District, and all those acting in concert with it to carry out its public purposes, that their property would be free from taxation for the duration of the Plaintiffs' agreements in accordance with existing state laws. By unilaterally attempting to with-

draw the tax exemption, the legislature has breached its promise in violation of the constitutional prohibition and has impaired the District's ability to perform the subject contract.

6. Plaintiff, International Speedway Corporation, would not have undertaken the construction and financing it did in 1958 if it had not been insured, by the provision of the law and by the indemnification agreement of Plaintiff District, that its interest in the real property would not be subject to taxes. The sudden attempt to impose taxes on the International Speedway Corporation's interest will, if not restrained, substantially diminish the value of its contract right and impair the ability of the corporation to carry out the public purpose mandated by the 1955 Act.

Further Affiant sayeth not.

/s/ William H. G. France
William H. G. France Pres.

Sworn to and subscribed
before me this 21st day
of February, 1975.

/s/ Norma L. Watson
Notary Public, State of Florida
at Large.
My commission expires: Aug. 5, 1976

APPENDIX B

Excerpt From Petitioners' Brief
Filed In Supreme Court of Florida

B. THE TRIAL COURT PROPERLY DENIED DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT.

It is submitted that the trial court had sufficient evidence before it in the nature of the Affidavit of William H. G. France and therefore there were no genuine issues of fact as to the granting of the motion in favor of Plaintiffs. A decision affirming the trial court's entry of judgment in favor of Plaintiffs renders Defendants' Motions for Summary Judgment moot. Since the trial court properly granted Plaintiffs' motion then it necessarily follows that it properly denied the motions of Defendants.